

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

2nd Swing Inc.,

Debtor(s).

BKY 06-41759

Chapter 11 Case

**APPLICATION FOR
RETENTION OF COUNSEL**

TO: The Honorable Gregory F Kishel and United States Trustee

The Official Committee of Unsecured Creditors ("Committee") makes this application for the retention of counsel to represent the Committee in all matters pertaining to the above-referenced bankruptcy case and respectfully represents:

1. A Petition under Title 11, United States Code, was filed by the above Debtor praying for an Order for relief under 11 U.S.C. Chapter 11. The Court has jurisdiction over this application pursuant to 28 U.S.C. §§157 and 1334, Bankruptcy Rule 5005, Local Rule 1070-1. This is a core proceeding. The petition in this case was filed on August 23, 2006. The case is now pending before this court.

2. The Committee was appointed by the Office of the United States Trustee on September 29, 2006.

3. The Committee wishes to employ, the law firm of Henson & Efron, 200 South Sixth Street, Suite 1800, Minneapolis, Minnesota 55402, attorneys duly admitted to practice before this Court, to act as legal counsel in connection with this Chapter 11 case.

4. The hourly rates for the attorneys who will provide the subject services range from \$205.00 to \$280.00.

5. This application arises under 11 U.S.C. §§ 1103 and 328 and Bankruptcy Rule 2014. This application is filed under Local Rules 2014-1 and 9013-1.

6. To the best of the Committee's Knowledge, Henson & Efron, P.A. has no connection with any creditor, or any other party in interest or their respective attorneys in this case.

7. Henson & Efron, P.A. does not represent any other entity in connection with this case, does not hold or represent any interest adverse to the estate, and is disinterested within the meaning of 11 U.S.C. §§ 327(a), 328, and Bankruptcy Rule 2014.

8. As counsel for the Committee, Henson & Efron, P.A., may provide any or all of the following services:

- a. Consult with the Debtor in Possession regarding the administration of the case;
- b. Investigate the acts, conduct, assets, liabilities, and financial condition of
- c. Participate in the formulation of a plan, advise unsecured creditors of the decisions of the Committee as to any plan proposed and collect and file with the court acceptances or rejections of the plan;
- d. Request the appointment of a trustee or examiner in the event that the Committee deems it appropriate; and
- e. Perform such other services as the Committee believes are in the interest of the unsecured creditors.

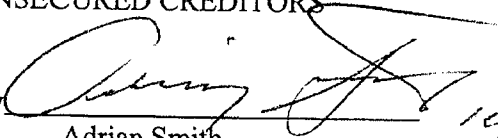
9. The Committee requests the fee applications for Henson & Efron, P.A. be heard on intervals of as little as 90 days during the case. The Committee further requests the Debtor in Possession be directed to pay invoices from Henson & Efron, P.A. as received on a monthly basis, subject to the holdback of 20% of the invoiced fees as provided in Instruction 8(c) of this Court's published Instructions for Filing a Chapter 11 case.

WHEREFORE, the Committee respectfully requests this Court approve the Committee's employment of the law firm of Henson & Efron, P.A to represent it for the purposes set forth herein..

OFFICIAL COMMITTEE OF
UNSECURED CREDITORS

Dated: October 9, 2006

By


Adrian Smith

10/9/06

UNITED STATES BANKRUPTCY COURT
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AFFIDAVIT OF PROPOSED ATTORNEY

Joel D. Nessel, being duly sworn on oath, deposes and says:

1. I am an attorney and associate in the law firm Henson & Efron, P.A., 220 South Sixth Street, Minneapolis, Minnesota, admitted to practice before the state and federal courts of Minnesota.

2. Henson & Efron, P.A. has no connection with any creditor of the Debtor or any other party in interest herein, or their respective attorneys, and does not hold or represent any interest adverse to the Debtor or the estate. Henson & Efron, P.A. has no connection with the United States Trustee or any person employed in the office of the United States Trustee.

3. Neither the law firm of Henson & Efron, P.A. nor affiant represents any interest adverse to the estate. Henson & Efron, P.A. does not represent any other entity in connection with this case, does not hold or represent any interest adverse to the estate, and is disinterested within the meaning of 11 U.S.C. § 327(a) and Rule 2014 of the Federal Rules of Bankruptcy Procedure.

4. Prior to the formation of the Committee, Henson & Efron, P.A. was approached by Gear-to-Go, Inc., a creditor in this case that has since been appointed to the Committee. At the time of the contact, Gear-to-Go was inquiring into retaining Henson & Efron to represent it in connection with the case. Gear to Go also sought to be a member of the Committee.

Henson & Efron, P.A. and Gear to Go discussed the formation of the Committee and the Committee's role in the bankruptcy case. Henson & Efron, P.A. was not formally retained by Gear-to-Go to represent it. Instead, the committee was appointed and asked Henson & Efron, P.A. to represent the Committee.

5. I was attending unrelated proceedings at the time the application was to be filed, and believed I had left instructions for the filing before leaving the office. Due to my misunderstanding of what I was told during a conversation related to the events of October 10, 2006, I believed that the filing had been completed. Although work on the case commenced immediately on October 10, it was not until October 24, 2006 that Henson & Efron, P.A. became aware of the fact that the application had not yet been filed. Accordingly, Henson & Efron, P.A. requests that this application be granted *nunc pro tunc* to October 10, 2006.

Dated: October 24, 2006

HENSON & EFRON, P.A.

/s/ Joel D. Nessel
Joel D. Nessel (#030475X)
220 South Sixth St., Suite 1800
Minneapolis, MN 55402

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PROOF OF SERVICE

The undersigned states that s/he is an employee of Henson & Efron, P.A., and in the course of said employment, on the date indicated below, s/he served, either contemporaneously with the preparation and filing of this proof of service or prior to its preparation and filing, the following:

Application for Retention of Counsel, Affidavit of Proposed Attorney, Proposed Order and Proof of Service

to be filed electronically with the Clerk of Court through ECF, and that ECF will send an e-notice of the electronic to the Filing Users, by automatic e-mail notification pursuant to the Electronic Case Filing System and this notice constitutes service or notice pursuant to Local Rule 9006-1(a).

Dated: October 24, 2006

/e/ Nancy W. McDonagh

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UNITED STATES BANKRUPTCY COURT
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**ORDER APPROVING THE EMPLOYMENT OF HENSON & EFRON, P.A. AS
COUNSEL FOR THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS**

Upon the Application (the Application”) of the Official Committee of Unsecured Creditors appointed in the above mention Chapter 11 case (the “Committee”), for entry of an order under 11 U.S.C. §§ 328 and 1103 authorizing the Committee to retain and employ the law firm of Henson & Efron, P.A. (“Henson & Efron”) as bankruptcy counsel; and the Court being satisfied with the representations made in the Application, that Henson & Efron represents no interest adverse to the Debtor’s estate and that its employment is necessary and in the best interests of the Committee; and it appearing that proper and adequate notice of the Application has been given and that no other or further notice is necessary; and upon the record in this Chapter 11 case, and after due deliberation thereon; and good and sufficient cause appearing therefore,

IT IS HEREBY ORDERED:

1. The Application is granted, *nunc pro tunc* to October 10, 2006.
2. The employment by the Committee of Unsecured Creditors of the law firm of Henson & Efron, P.A. as counsel for the Committee is approved.

BY THE COURT:

Dated: _____

Gregory F. Kishel
U. S. Bankruptcy Judge